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ANTHONY ASQUITH
28-461 COLUMBIA STREET WEST
WATERLOO ON N2T 2P5 CA CANADA

In re Application of REPPLE et al. :
Application No.: 10/505,343 : DECISION ON PETITION
Filing: 23 August 2004 :
Attorney Docket No.: 752-06US : UNDER 37 CFR 1.78(a)(3)
For: THERMAL CONTROL OF FLOWRATE :
IN ENGINE COOLANT SYSTEM :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed 08 April 2009 to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed application No. 10/330,108 filed on 30 December 2002. The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1).

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a

proper benefit claim is: "This application is a continuation of Application No. 10/330,108 filed 30 December 2002." A benefit claim that merely states: "This patent application derived priority from US patent application number 10/330,108 filed 30 December 2002 and from international application PCT/CA2003-/02017 filed on 30 December 2003" does not comply with 37 CFR 1.78(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. See Manual of Patent Examining Procedure, (8th ed., Revision 7 (July 2008)), Section 201.11, Reference to Prior Application(s). The amendment filed 02 October 2008 is improper because there is no specific reference indicating the relationship of U.S. Application 10/330,108 to the instant application. The application data sheet filed 23 August 2004 similarly fails to properly state such relationship.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment¹ or supplemental application data sheet (37 CFR 1.76) stating the relationship of the prior-filed application to the instant application is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PCT LEGAL ADMINISTRATION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Window located at:
 Mail Stop PCT
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: 571-273-0459
 ATTN: Office of PCT Legal Administration

Any questions concerning this matter may be directed to Cynthia Kratz at (571) 272-3286.



Byran Lin
PCT Legal Examiner
Office of PCT Legal Administration

¹ Note 37 CFR 1.121